

**FINAL REPORT
OF THE
INTERIM STUDY COMMITTEE ON
STATE AND LOCAL GOVERNMENT ISSUES**



**Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204**

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A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.state.in.us/legislative/>.

PREFACE

A draft of this report was reviewed by the Interim Study Committee on State and Local Government Issues at its final meeting on October 15, 2001. The Committee approved by voice vote each completed section of the draft report; however, due to the lack of a quorum at the conclusion of the meeting, the Committee did not approve the draft report as a whole.

I. LEGISLATIVE COUNCIL DIRECTIVE

In 2001, the Legislative Council created the Interim Study Committee on State and Local Government Issues and directed the Committee to study the following topics:

- (1) Telephone services for inmates in state and local correctional facilities.
- (2) Design-build method of project delivery for public construction.
- (3) Truck transportation issues.
- (4) Investigation of the Department of Correction.

II. INTRODUCTION AND REASONS FOR STUDY

Senator Charles Meeks authored Senate Concurrent Resolution 26, urging the study of issues related to collect telephone service for inmates in Department of Correction and local jail facilities. Currently, there is no uniform system for negotiating telephone rates for state and local correctional facilities, and the rates overall are extremely high and strain the finances of the families of confined offenders.

Representatives Scholer and Kuzman co-authored House Resolution 62, recommending the study of the feasibility of employing the design-build method of project delivery for public construction. The design-build method of project delivery may result in earlier completion dates for public construction projects and may decrease the likelihood of litigation between designers and builders. Employing the design-build method of project delivery may result in better allocation of the public monies.

Representative Alderman authored House Bill 1566, encouraging the study of truck transportation in Indiana, specifically accident patterns involving trucks, truck speeds, and the creation of truck-free highways in Indiana.

Representatives Vernon Smith, Charlie Brown, Crawford, Dickinson, Harris, Porter, and Summers co-authored House Resolution 39, reviving an investigation into the Department of Correction. At the request of Committee member Senator Weatherwax, this topic was expanded to include a study of the educational system within the Department of Correction.

III. SUMMARY OF WORK PROGRAM

The Committee met five times. In its first meeting, the Committee heard testimony on and discussed HB 1566, concerning truck transportation issues, including the feasibility of truck-

free and truck-only highways. At its second and third meetings, the Committee studied SCR 26, concerning telephone services for inmates in state and local correctional facilities. At its fourth meeting, the Committee addressed HCR 39 in the context of previous investigations of the Department of Correction. At its fifth and final meeting, the Committee continued its study of the Department of Correction, specifically educational systems within the Department, and received testimony on and discussed the design-build method of project delivery for public construction. The Committee also reviewed the draft version of this final report.

IV. SUMMARY OF TESTIMONY

The Final Report is a general summary of the testimony and comments received and made by the Committee. The Committee minutes are available on the Internet at <http://www.in.gov/legislative/interim/committee/icsl.html>.

Truck Transportation

Kenny Cragen, Indiana Motor Truck Association

States east of Indiana have experimented with truck-only and truck-free highways, but the use of such highways is not widespread. Some local streets and roads prohibit truck access. Indiana has adopted all federal regulations, including optional intrastate regulations, governing truck traffic. Fully opening national borders to truck traffic under the North American Free Trade Agreement might lead to nonenforcement of existing rules and regulations. The Indiana Motor Truck Association has no official position on NAFTA.

The use of cameras on stoplights to enforce traffic violations is acceptable if the violations are assessed against the driver, and not the owner, of the truck. Tractor-trailer fatalities, per mile, have decreased nationally in recent years. Problems exist at truck stops because trucks park in the ingress and egress lanes. Redesigning and enlarging the truck stops might remedy the problem; regardless, the drivers are required to stop and rest at designated intervals. Truck stops are less common now than in the past.

If the government decided to install computers in all trucks, including those driven by "wildcatters" who operate outside the organized trucking industry, in order to download driving data at weigh stations to discover traffic violations, it would first be necessary to make sure the computerized information would be admissible in court as would the same information entered manually in a log book.

Inmate Telephone Services

Jay McQueen, Department of Administration (DOA)

DOA recently completed its request for proposals (RFP) and acquisition procedure for interlata, intrastate, and interstate long distance services for the State of Indiana, including the DOC. The DOA entered into a four year contract with T-Netix to provide these services for the State. For operator-assisted collect calls placed from a State-operated pay phone, T-Netix will charge a \$1.50 connect fee and \$0.25 per minute. An individual may prepay the individual's

telephone bill to avoid paying the \$1.50 connect fee. The DOA will issue a new RFP in the spring for local telephone service.

The State's current contract with AT&T expires in October. Under this contract, AT&T charged a connect fee of \$3.95 per call and \$0.69 per minute. These charges applied to all State-operated pay phones. The State receives a 53% commission on all interlata and long distance calls made through AT&T on State-operated pay phones. AT&T made annual prepayments of commissions to the DOA which were reconciled at the end of the year based on the actual commissions received by the DOA.

Commissions received from interlata and long distance telephone calls go to the DOA. The DOA received approximately \$11 million in commission in 2000. There is currently about \$5.5 million in the telephone fund. The money is directed by the SBA and the General Assembly to be spent in four areas: the government management information system; the wide area network; the judicial technical and automation project; and the Department of Local Government Finance.

The contract with T-Netix starts in October and covers all pay phones operated by the State, from state parks to state prisons. T-Netix will pay the State 45% in commissions. T-Netix buys telephone time from another telephone utility and resells the time. T-Netix's specialty is dealing with departments of correction. The State has several contractual remedies if T-Netix is unable to provide reliable and adequate telephone service at the price agreed on in the contract. The State may retain another long distance provider and charge the cover in price to T-Netix.

Based on the new rates and commissions, the DOA anticipates losing about \$5 million each year. The RFP on which the AT&T contract was based did not require prepayment of commissions. The goal of the previous RFP was to maximize profit for the State, and the only delimiting criteria was that the maximum rate could not exceed the maximum tariff set by the Indiana Utility Regulatory Commission. The decision whether to offer prepayment of commissions was a business decision made at the discretion of the company, but it was a factor the DOA considered when entering into a contract.

The State never received a bonus from AT&T. The State received a prepayment of commissions that later was reconciled against the actual amount of commissions the State generated. Some counties, however, do receive actual bonuses from telephone contracts. A bonus would mean the State received money in addition to the terms of the contract, whereas the State only received prepayment of commissions subject to later reconciliation. At the end of its contract, the State always received additional commission payments from AT&T. The request for proposals for the 1997 contract did not specify a payment method, and an offer to prepay commissions weighed neither in favor of nor against a response to the request for proposals.

Mike Leppert, Indiana Utility Regulatory Commission (IURC)

In *Mario L. Sims, Sr., et al., v. AT&T*, Cause No. 41429, (August 24, 2001), the IURC deferred to the RFP process because the RFP process conforms to the tariff rates approved by the IURC. A telephone utility may set its rates anywhere up to \$0.69 per minute, the maximum tariff rate approved by the IURC. The market for telephone services determines the ultimate rate paid by customers. The rates charged for inmate telephone calls are high but not necessarily unreasonable or discriminatory. Rates charged to the general population may be higher than

prison rates and still fall within the tariff guidelines. If commissions were outlawed, telephone rates probably would increase by the amount of the commission.

The rates at state-operated payphones are generally lower than the rates at public payphones because the state is able to negotiate a lower rate in its contract. The rates at all state-operated payphones are the same whether a phone is located in the Department of Correction or in the Statehouse or in a state park. However, inmate calls generally cost more because an inmate may place only operator-assisted collect calls whereas a member of the general population may use a calling card or dial into a different provider to save money.

Randy Koester, Department of Correction (DOC)

The DOC receives all commissions from local telephone calls placed by confined offenders in state correctional facilities; the commissions are deposited directly into the offender recreation fund for the facility that generated the commissions. The offender recreation fund is used to pay for recreational equipment, law library and general library supplies and books, videotapes, music, guest speakers, and celebratory meals. In fiscal year 1998-1999, all DOC facilities received \$693,479 in commissions; in fiscal year 1999-2000, DOC received \$850,157; and in fiscal year 2000-2001, it is estimated that the DOC will receive \$900,000 in commissions.

Telephones in DOC facilities are generally used for good purposes and serve to rehabilitate prisoners. Each facility maintains a roster, and an inmate must sign up to use the phone. Each inmate has a pin number used to identify collect calls. The inmate must provide the facility with a list of numbers the inmate intends to call. As part of its monitoring function, the facility may block calls made to numbers not on the list. Phone calls made to attorneys or in an emergency generally are not monitored. A facility may place further restrictions on an inmate's telephone use based on the offender's conduct. If the DOC no longer receives commissions, it would have to reevaluate its provision of telephone services. Monitoring equipment is part of the DOC's contract with Ameritech, and if Ameritech removed the monitoring equipment, DOC might no longer be able to provide monitored telephone service to inmates.

Bruce Hartman and Mike Hoose, State Board of Accounts (SBA)

The SBA audits DOA and DOC contracts as part of its two year audit cycle. The SBA is not involved in the RFP process. If the rate charged under a contract is inaccurate, it is cited in the audit report. The SBA is not concerned with the rate charged for telephone services.

Indiana Sheriffs' Association

County sheriffs enter into contracts with telephone utilities to provide service to the jail inmates. For safety purposes, a sheriff may place a header on a telephone message informing the recipient of the origin and price of the collect call placed by the inmate. A sheriff also may negotiate with the telephone company to place caps on the accounts of individuals called by inmates; this protects both the company and the recipient of the phone call. The sheriffs testified that the commissions their jails receive are used to help the inmates and relieve the burden on taxpayers.

Steve Rogers, Ameritech

Ameritech currently provides local telephone service for the State through a contract with the DOA. Ameritech has similar commission-based contracts with 38 state and local correctional facilities. For an operator-assisted local call placed at a DOC pay phone, Ameritech charges a connect fee of \$3.65. For all other State-operated pay phones, the connect fee is \$4.60. Telephone service in the DOC requires different security measures, such as more technologically sophisticated equipment and software. Members of the general population usually do not pay the \$4.60 connect fee because they can use dial-around services, calling cards, or mobile phones. Uncollectible debt is three to four times as great in the inmate telephone market as in other markets.

Bob Veneck, AT&T

Under the previous contract with AT&T, the State received annual prepayments of commissions that were reconciled at the end of each year. In 1997, AT&T made a prepayment of commissions to the State in the amount of \$9.8 million. The State received \$4.9 million at the beginning of the first contract year and another \$4.9 million at the beginning of the second contract year. At the end of the first contract year, if the State had generated more than \$4.9 million in commissions, AT&T would have paid the excess over \$4.9 million to the State. If, at the end of the first contract year, the State had generated less than \$4.9 million in commissions, the State would have paid the amount owed to AT&T. This procedure applied to extensions of the 1997 contract. Prepaying commissions is part of the contract negotiations based on the time value of money.

David Bottorff, Indiana Association of Cities and Towns

There could be unintended negative consequences if commissions were prohibited, because presently the commissions are deposited in the jail commissary funds and used for the benefit of inmates. Telephones are beneficial to inmates because it helps them maintain contacts with the general population.

Each county negotiates its own telephone contracts for both local and long distance

services, and the rates are restricted by the tariffs set by the IURC. The charge for each inmate call includes an initial connection fee and the amount of the fee is stated in a recording that precedes each inmate call. In some cases, commissions are deposited directly into the county general fund. A contract may last from two to four years, and occasionally the commission rate is tied to the length of the contract. The county commissioners and the sheriffs are best able to work out the allocation of commissions by themselves. It is not likely that phones would be removed from jails in the absence of commissions because inmates benefit from using the telephones.

Additional Testimony and Committee Discussion

In the mid-1980s, both incumbent and competitive local exchange carriers began soliciting county jails and sheriffs to enter into exclusive contracts with the carrier for provision of telephone services to the local correctional facilities. By entering into a two to four year contract, the local correctional facility would receive a percentage of the profits from collect telephone calls made by inmates. This money generally was designated for the jail commissary fund. The DOC receives ten to fifteen million dollars in commissions. The financial burden falls on the family of the inmate who places the collect call.

Investigation of the Department of Correction

Alleged Racist Organizations within the DOC

Lieutenant Mark Mitchell, Detective, Indiana State Police (ISP)

A five member ISP team conducted an eighteen month investigation of Putnamville Correctional Facility. The team investigated allegations of the existence of The Brotherhood, an alleged white supremacist organization, and improper treatment of inmates. Specifically, the team looked for evidence that would substantiate criminal charges, including trafficking in narcotics or cigarettes and the battery of inmates. The team was unable to substantiate any of the allegations.

The team found no evidence of an organized white supremacist organization. Some facility employees had made inappropriate comments, but the DOC handled those employees through its internal disciplinary system. The team found no evidence of a white supremacist organization in the surrounding community. The Putnam County prosecutor reviewed the evidence gathered by the team and found no probable cause to bring charges against any facility employee.

The staff at Putnamville Correctional Facility and DOC cooperated with, and did not obstruct, the investigation. The ISP team was not threatened by facility employees or inmates. The investigation is still ongoing but is suspended until the ISP receives new information requiring the team to resume the investigation.

Trooper David Kirkham, ISP

Trooper Kirkham is the lone ISP liaison with the eight correctional facilities in the Lowell district in northwest Indiana; he initiates investigations when DOC refers potentially criminal matters to ISP. No DOC employee has attempted to influence his investigation. He currently

handles five active cases. He presents all the evidence he gathers in any case to the prosecutor for the county in which the facility is located. No prosecutor has filed charges in any of the 23 cases in which Trooper Kirkham presented evidence.

Randy Koester, DOC

The DOC investigated individual incidents of alleged racist behavior and physical abuse as they arose. The DOC did not conduct a comprehensive investigation of The Brotherhood. The Department of Justice is conducting an investigation at Putnamville based on the same allegations that led to the ISP investigation.

The Indiana Correctional Training Institute (CTI) logo design was based on the recycling logo, three arrows in the shape of a triangle. The CTI logo design has three arrows in a circle around the seal of the State of Indiana; this design symbolized the DOC's commitment to recycling confined offenders into productive citizens. A reporter at *NUVO*, an Indianapolis weekly newspaper, noticed that the intersections of the arrows looked like three Ks, or "KKK". DOC commissioned a new design for the CTI logo and instructed its employees not to wear the old pins. New CTI pins and certificates are available to all DOC staff.

Additional Testimony

Kathleen Ivancic is the mother of Charles Walters, an Indiana offender who was sent to Otter Creek Correctional Facility in Wheelwright, Kentucky. Following a series of riots in Otter Creek, Mr. Walters and the other Indiana inmates housed at Otter Creek have returned to Indiana; Mr. Walters is presently confined at Indiana State Prison. Ms. Ivancic provided the committee a set of documents detailing her allegations that the riots were not immediately reported in the local Kentucky newspapers.

Other offenders at Otter Creek beat Ms. Ivancic's son, causing him to need two root canals. DOC officials have indicated that there are no records of his root canals. Representative Mellinger stated that he will ask for a full response as to these matters from both the Governor and the DOC.

Jerry Laxson from the Citizens United for the Rehabilitation of Errants (CURE) testified that the DOC needs a better method of training offenders.

Educational Systems within the DOC

Professor Joanna Wallace, Dean of the School of Continuing Education and Public Service, Ball State University

850 confined offenders are enrolled in Ball State's correctional education program at six different sites. Ball State offers three different degrees: associate; bachelor of general studies; and bachelor of science in history. This is a traditional liberal arts curriculum for which the confined offender receives credit time upon completion. Confined offenders who complete higher education degrees cost the DOC less because they are released earlier.

Based on anecdotal evidence, there is a lower recidivism rate among offenders who participate in these programs. The rate is even lower among offenders who complete degrees.

The grants that are used to fund education for confined offenders are also available to the general public.

Doyle McAlister, Indiana State Teachers' Association

Based on a 1992 study, 11 percent of confined offenders have a learning disability, and 52 percent are illiterate. Nationally, the recidivism rate among offenders is 60 percent. At one DOC facility, the recidivism rate among offenders who began but did not complete a degree program was 11 percent; the rate among offenders who completed a degree program was 3 percent. It is Mr. McAlister's belief that the best service DOC can provide offenders is an education.

The DOC curriculum is being neglected and education programs in DOC facilities are underfunded. DOC classroom facilities are substandard and do not meet Department of Education requirements. Special education rules are routinely violated at DOC facilities, and DOC educators do not have adequate preparatory time.

DOC Representatives Randy Koester, Carolyn Heir, and John Nalley (Exhibit ?)

The administrative costs of DOC educational programs are on average about 5% of the total costs of the programs. The salaries of teachers in DOC facilities are based on the salaries of the largest school corporation in the county. Because DOC teachers work year round, the salaries of DOC teachers are significantly higher than are the salaries of teachers in the school corporations in the county in which the prison facility is located. The DOC education budget is not tied to any other state education budget. Each DOC facility has its own budget for education, and each DOC facility determines how to spend its education budget.

Design-Build

Consulting Engineers of Indiana: Doug Simmons, Ed Doyle, and Eric Roeske

The current system is open to the public and provides an incentive for early completion. The design-build process is comprised of contractors, builders, and consultants working together to both design and construct a project. The design-build method is bad public policy and too complicated and costly. The current system works adequately and does not need to be changed.

Associated General Contractors of Indiana: Toby McClamroch, Bingham Summers, and Rob Palmer

Design-build simplifies the way public construction takes place. The legislation proposed in 2001 would not have forced public entities to use design-build but would have allowed it as an alternative to the traditional bidding process. Current law does not allow governmental entities to use the design-build method for public construction.

Additional Testimony

The design-build method is already being used in several private projects. Representatives of Indiana's counties, cities, and towns, as well as representatives of private industry opposed the design-build method, stating that the method limited municipalities' current construction practices. The legislature needs to act on the topic because there is confusion within the industry.

Legislation would create consistency among both private entities and public agencies who want to participate in the design-build process.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Committee made and approved by voice vote the following recommendations:

! The Committee supports lower costs for telephone calls placed by confined offenders. Individual committee members will pursue legislation to lower costs.

! The Department of Correction is urged to continue its practice of monitoring and dealing with racist activities through its internal discipline procedures.

! Testimony about the feasibility of using the design-build method for public construction was very comprehensive, but the topic requires more study.

WITNESS LIST

David Bottorff, Indiana Association of Counties
Kenny Cragen, Indiana Motor Truck Association
Ed Doyle, Construction Engineers of Indiana
Anthony Dzwonar, Office of Utility Consumer Counselor
Harold Fors, Fors Construction
Tom Freuchtenicht, Indiana Sheriff's Association
Tonya Galbraith, Indiana Association of Cities and Towns
Bruce Hartman, State Board of Accounts
Carolyn Heir, Department of Correction
Mike Hoose, State Board of Accounts
Kathleen Ivancic, citizen
Charles Kahl, Indiana Construction
David Kirkham, Trooper, State Police
Randy Koester, Department of Correction
Jerry Laxson, Citizens United for the Rehabilitation of Errants
Mike Leppert, Utility Regulatory Commission
Doyle McAlister, State Teachers' Association
Toby McClamroch, Bingham Summers
Jay McQueen, Department of Administration
Mark Mitchell, Lieutenant, State Police
John Nalley, Department of Correction
Rob Palmer, Association of General Contractors
Dewey Pearman, Construction Advancement Foundation of Northern Indiana
Eric Roeske, Construction Engineers
Steve Rogers, Ameritech
Doug Simmons, Construction Engineers of Indiana
Bob Veneck, AT&T
Joanna Wallace, Ball State University